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IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

310 GRAMERCY, LLC,

Plaintiff and Respondent,

v.

SHARON PARK,

Defendant and Appellant.

B286853
(Los Angeles County
Super. Ct. No. BC616141)

APPEAL from a judgment of the Superior Court of Los Angeles County, Terry A. Green, Judge. Affirmed.

Law Office of Jeff A. Mann and Jeff A. Mann for Defendant and Appellant.

JAZ and Peter F. Jazayeri for Plaintiff and Respondent.

INTRODUCTION

Respondent 310 Gramercy, LLC initiated contractual arbitration proceedings against appellant Sharon Park, claiming appellant had breached the parties' agreements for the sale of real property. After appellant failed to respond to respondent's motion for summary disposition, the arbitrator granted the motion and awarded damages to respondent. The trial court confirmed the award on respondent's petition. On appeal, appellant argues the court should have vacated the award because: (1) the arbitrator exceeded her powers in awarding damages; and (2) appellant's failure to respond to respondent's dispositive motion was due to her mistaken belief she was represented by counsel. We reject her contentions and affirm.

BACKGROUND

A. The Dispute and the Commencement of Arbitration

In 2015, the parties entered two contracts for the sale of real property owned by appellant. Each contract included an arbitration provision, under which the parties agreed to arbitrate any dispute or claim arising from the contract. In April 2016, after appellant refused to proceed with closing, respondent filed a demand for arbitration, seeking either specific performance or damages. Shortly thereafter, respondent also filed a complaint in the superior court, seeking specific performance. According to respondent, it filed the complaint in order to record *lis pendens* on the

properties. On respondent's motion, the court then stayed the lawsuit pending the arbitration.

B. The Arbitration and the Award

In the arbitration, appellant was initially represented by attorney Vincent Kim, but his representation ended in August 2016. Mr. Kim filed an attorney substitution form in the superior court, signed by appellant and reflecting she would be representing herself in the judicial proceeding. Appellant then consulted attorney Jamie Kim for representation. However, in a September email to respondent's counsel, Ms. Kim stated she had informed appellant she would not represent her in the arbitration.

Respondent's counsel subsequently emailed appellant directly to schedule her deposition and asked if she would be available during a certain week. Appellant replied that she would be unavailable and asked respondent's counsel to schedule her deposition for a later time.

In April 2017, respondent filed a motion for summary disposition of the arbitration and served appellant with a copy. Appellant filed no opposition, and in May, the arbitrator granted the motion and issued a final award in favor of respondent, awarding it over \$500,000 in damages, attorney fees, and costs. Shortly thereafter, appellant wrote the arbitrator through newly retained counsel, asking the arbitrator to set aside her ruling. The arbitrator replied that she had lost jurisdiction over the matter after issuing the

award and thus could not set it aside, even if she were inclined to do so.

C. The Trial Court's Confirmation of the Award

Respondent then petitioned the trial court to confirm the arbitration award. Appellant, through counsel, opposed the petition and asked the court to vacate the award, arguing the arbitrator exceeded her powers in awarding damages where respondent's complaint in the stayed lawsuit sought only specific performance. She further contended the court had discretion under Code of Civil Procedure section 473¹ to vacate the award, asserting she failed to oppose respondent's dispositive motion in the arbitration because she mistakenly thought she was represented by counsel.

The trial court ultimately granted respondent's petition and entered judgment confirming the arbitration award. Appellant did not request, and the court did not issue, a statement of decision. This appeal followed.

DISCUSSION

Appellant contends the trial court erred in failing to vacate the arbitration award. She asserts the arbitrator exceeded her powers by awarding respondent damages,

¹ As discussed below, section 473, subdivision (b) grants courts discretion to relieve litigants from proceedings "taken against [them] through [their] mistake, inadvertence, surprise, or excusable neglect." Undesignated statutory references are to the Code of Civil Procedure.

requiring vacation of the award under section 1286.2. Appellant further claims she failed to oppose respondent's dispositive motion in the arbitration due to her mistake, and thus the court abused its discretion in failing to vacate the award under section 473.

“The California Arbitration Act (. . . § 1280 et seq.) ‘represents a comprehensive statutory scheme regulating private arbitration in this state.’ [Citation.] ‘The statutes set forth procedures for the enforcement of agreements to arbitrate (. . . §§ 1281.2-1281.95), establish rules for the conduct of arbitration proceedings except as the parties otherwise agree (. . . §§ 1282-1284.2), describe the circumstances in which arbitrators’ awards may be judicially vacated, corrected, confirmed, and enforced (. . . §§ 1285-1288.8), and specify where, when, and how court proceedings relating to arbitration matters shall occur (. . . §§ 1290-1294.2).’ [Citation.]” (*Cooper v. Lavelly & Singer Professional Corp.* (2014) 230 Cal.App.4th 1, 10-11 (*Cooper*).)

On appeal from an order confirming an arbitration award, we review the trial court's legal determinations de novo and its factual findings for substantial evidence. (*Cooper, supra*, 230 Cal.App.4th at p. 12.) “Where, as here, no statement of decision was requested or made, this court must presume that the trial court found every fact necessary to support the judgment, and must affirm the judgment if correct on any ground.” (*Yellen v. Board of Medical Quality Assurance* (1985) 174 Cal.App.3d 1040, 1058.)

A. The Arbitrator Did Not Exceed Her Powers

Appellant contends the arbitrator exceeded her powers in awarding damages, which respondent's complaint did not seek, and thus the trial court erred in failing to vacate the award. "In determining whether an arbitrator exceeded his [or her] powers, we review the trial court's decision de novo" (*Jordan v. Department of Motor Vehicles* (2002) 100 Cal.App.4th 431, 443.)

Under section 1286.2, on a party's petition or response requesting vacation of an arbitration award, the court must vacate the award if it determines "[t]he arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted." (§ 1286.2, subd. (a)(4).) Arbitrators exceed their powers by selecting a remedy not authorized by law. (*O'Flaherty v. Belgium* (2004) 115 Cal.App.4th 1044, 1062.) Generally, however, "[a]bsent an express and unambiguous limitation in the contract or the submission to arbitration, an arbitrator has the authority to . . . award any relief rationally related to his or her factual findings and contractual interpretation." (*Gueyffier v. Ann Summers, Ltd.* (2008) 43 Cal.4th 1179, 1182 (*Gueyffier*).)

Here, appellant does not contend that either the contract or the submission to arbitration included an express and unambiguous preclusion of the arbitrator's power to award damages; indeed, respondent's demand for arbitration, filed before the complaint, expressly sought damages. Instead, appellant argues the arbitrator's award

of damages was unauthorized because the complaint respondent filed in the superior court sought only specific performance. We disagree.

A contractual arbitration is an independent proceeding that draws its authority from the parties' agreement, rather than from a party's civil complaint. (See *Mercury Ins. Group v. Superior Court* (1998) 19 Cal.4th 332, 344 ["contractual arbitration arises solely out of an arbitration agreement"]; *Byerly v. Sale* (1988) 204 Cal.App.3d 1312, 1316 [reversing dismissal of complaint for failure to prosecute while arbitration was pending, but noting matter was "much ado about nothing" as "[t]he complaint will be of significance only if the parties choose to return to [court] to litigate the dispute on the merits"]; *Dodd v. Ford* (1984) 153 Cal.App.3d 426, 432 [dismissal of complaint and cross-complaint for failure to prosecute did not affect related arbitration proceeding; "[d]espite the dismissal, the arbitration agreement could be independently enforced . . . and any resulting award could be confirmed . . . without reference to the complaint or cross-complaint"].) Appellant cites no authority, and we are aware of none, suggesting that a complaint's prayer for relief might limit the powers of the arbitrator. As appellant has identified no valid limitation on the arbitrator's authority to award damages, the trial court did not err in declining to vacate the award on this ground. (See *Gueyffier, supra*, 43 Cal.4th at p. 1182.)

*B. The Trial Court Did Not Abuse Any Discretion It
Had under Section 473*

Appellant contends the trial court abused its discretion in failing to vacate the arbitration award based on her mistake, inadvertence, surprise, or excusable neglect under section 473. Section 473, subdivision (b) grants courts discretion to “relieve a party . . . from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.”

“The party seeking relief [under section 473] . . . bears the burden of proof in establishing a right to relief.” (*Hopkins & Carley v. Gens* (2011) 200 Cal.App.4th 1401, 1410 (*Hopkins*)). Moreover, a motion under section 473 ““is addressed to the sound discretion of the trial court, and in the absence of a clear showing of abuse . . . the exercise of that discretion will not be disturbed on appeal.”” (*Anastos v. Lee* (2004) 118 Cal.App.4th 1314, 1318.) “The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason.” (*Id.* at pp. 1318-1319.) “[T]he trial court’s express and implied factual determinations are not disturbed on appeal if supported by substantial evidence.” (*Giorgio v. Synergy Management Group, LLC* (2014) 231 Cal.App.4th 241, 247 (*Giorgio*)).

Appellant claims she mistakenly thought she was represented by counsel and therefore did not personally oppose respondent’s dispositive motion in the arbitration. She asserts the court was required to vacate the arbitration

award under section 473. Respondent counters that section 473 does not apply to arbitration awards and that, regardless, the record does not support appellant's contention she believed she was represented by counsel.

We need not decide whether section 473 applies to arbitration awards, because appellant has not established any of the statutory grounds for relief and thus cannot show the court abused its discretion. The evidence strongly suggests appellant was aware she was without counsel in the arbitration. Though appellant was initially represented by counsel, his representation ended several months before respondent filed its dispositive motion. A substitution form filed by appellant's former counsel in the superior court -- also signed by appellant -- reflected that she was proceeding pro se. Although appellant then consulted another attorney for representation, the latter promptly informed appellant that she would not represent her in the arbitration.

Knowing appellant was unrepresented, respondent's counsel later emailed her directly to schedule her deposition. Appellant replied and requested a different time, neither questioning why respondent's counsel had contacted her directly, nor suggesting she was represented by, or seeking to retain counsel. When respondent filed its dispositive motion, it served appellant herself with a copy. As far as the record reflects, appellant did not discuss the matter with any

counsel.² In her briefs, appellant does not explain what led to her alleged belief that she was represented by counsel, and she fails to address the evidence discussed. Accordingly, she has not established entitlement to relief under section 473. (See *Hopkins, supra*, 200 Cal.App.4th at p. 1410; *Giorgio, supra*, 231 Cal.App.4th at p. 247.) In sum, appellant has shown no error in the trial court’s decisions declining to vacate the award and confirming the award.

² Appellant asserts in conclusory fashion that her mistake arose from “the combined effects” of her mistaken belief that she was represented by counsel and her limited understanding of English. However, she fails to develop any argument based on her lack of English proficiency, and has therefore forfeited the issue. (See, e.g., *Sviridov v. City of San Diego* (2017) 14 Cal.App.5th 514, 521 [arguments not developed are forfeited].) Moreover, forfeiture aside, appellant’s email exchange with respondent’s counsel suggests her English language comprehension was sufficient to understand respondent’s communications, including the dispositive motion.

DISPOSITION

The judgment is affirmed. Respondent is awarded its costs.

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MANELLA, P. J.

We concur:

WILLHITE, J.

COLLINS, J.